IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT APPEAL NO : 1464 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01/09/2004 in WP NO : 6593 OF 2000 on the file of the High Court.)

Between:

P. Sudershan Reddy, S/o. Shivarami Reddy,
Ex.Rect. GNR No. 15764391W, R/o. Pamurapalli, Giddalur Taluka,
Prakasam District.

..... APPELLANT

AND

1. The Director General of Air Artillery (ADA -5) General Staff Branch, Army Hqrs (DHQ), New Delhi - 110 001.
2. The Commanding Officer, (Technical Training Regiment) Head Quarters, Defence Artillery Centre, Nasik Road Camp - 422 102, Maharashtra.
3. The Senior Record Officer, for OIC Record, Air Defence Artillery records, Nasik Road Camp - 422 102, Maharashtra.
4. The Government of India, Represented by its Secretary, Ministry of

Defence, New Delhi - 110 001.

.....RESPONDENTS

Counsel for the Appellant:MR.C.DAMODHAR REDDY

Counsel for the Respondents No.: MR.A.RAJASEKHAR REDDY AND MR.B.NARAYANA REDDY (Additional S.C. for Central Government).

The Court at the stage of admission made the following :

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE GODA RAGHU RAM

W.A.No.1464 of 2004

ORAL ORDER : (per GR,J)

Aggrieved by the order of the learned single Judge dated 1.9.2004, disposing of the writ petition, declining to set aside the discharge order dated 26.10.1998, while directing the respondents to issue a notice to the petitioner and afford him a reasonable opportunity to make a representation against the order dated 26.10.1998, the petitioner is in appeal.

The petitioner was recruited to the Army through the Branch Recruitment office, Guntur on 12.11.1996. He was put to training. During the course of training by

proceedings dated 26.10.1998, he was discharged from service with effect from 26.10.1998, on medical grounds. Alleging that the order of discharge is in violation of the established principles of natural justice and that no reasons whatsoever are recorded while he was discharged from service, the writ petition is filed. The respondents filed a counter affidavit wherein the claim of the petitioner to have successfully undergone the training, both the basic military training and advance/technical training has been disputed and it is stated that he had fallen sick both during military training as well as during advance training. In the counter affidavit, it was pleaded that the petitioner did not complete advance training and did not pass a single mandatory written/practical test and thus failed to qualify for the completion of the advance training. It is further stated that the petitioner missed his training on account of reporting sick, hospital admissions and sick leave for a period of 271 days during his training period and therefore the order of discharge was passed.

The learned single Judge on a perusal of the records was satisfied that the petitioner had reported sick on different spells for a total period of 271 days from 7.2.1997 to 9.10.1998 and that the record revealed that he did not appear or pass any test during the advance training period. However, as the order of discharge was passed without a notice or opportunity to the petitioner, the learned single Judge of this Court felt it appropriate to afford the petitioner what could in effect be termed a post-decisional opportunity, in the circumstances of the case.

Having regard to the above mentioned facts set out in the counter affidavit filed by the respondents herein in the writ petition which have not been denied by the petitioner in any subsequent pleading, it is established that the petitioner absented in the training for a period of 271 days and did not pass any of the mandatory written/practical tests in the advance training. In the circumstances, we find no error in the conclusion of the learned single Judge and that a post decisional opportunity to the petitioner, against the order of discharge impugned in the writ petition, would substantially meet the ends of justice. We find no reason to interfere with the order of the learned single Judge. In view of the directions in the judgment under appeal, the respondents shall issue a notice to the petitioner affording an opportunity to make a

representation and if the petitioner submits any representation, the same shall be considered and an appropriate response shall be given by the respondents to the petitioner. If the petitioner is aggrieved by any such order of the respondents, he is at liberty to pursue the matter in an appropriate proceeding. We find no reasons to interfere. The writ appeal is accordingly dismissed at the stage of admission.

---

knk 25.10.2004

To

1. The Director General of Air Artillery (ADA -5) General Staff Branch, Army Hqrs (DHQ), New Delhi - 110 001.
2. The Commanding Officer, (Technical Training Regiment) Head Quarters, Defence Artillery Centre, Nasik Road Camp - 422 102, Maharashtra.
3. The Senior Record Officer, for OIC Record, Air Defence Artillery records, Nasik Road Camp - 422 102, Maharashtra.
4. The Government of India, Represented by its Secretary, Ministry of Defence, New Delhi - 110 001.
5. Two CD copies.